

**CAUSE NO. 2020-DCL-01089**

<b>CASIMIRO GRACIANO</b>	<b>§</b>	<b>IN THE DISTRICT COURT</b>
	<b>§</b>	
<b>VS.</b>	<b>§</b>	<b>357<sup>th</sup> JUDICIAL DISTRICT</b>
	<b>§</b>	
<b>ALLSTATE FIRE AND CASUALTY</b>	<b>§</b>	
<b>INSURANCE COMPANY</b>	<b>§</b>	<b>CAMERON COUNTY, TEXAS</b>

**DEFENDANT, ALLSTATE FIRE AND CASUALTY COMPANY'S ORIGINAL  
ANSWER AND JURY DEMAND**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY, Defendant in the above-styled and numbered cause, and files this, its Original Answer to Plaintiff's Original Petition and would show unto the court the following.

**I.**

**SPECIAL EXCEPTIONS**

Defendant specially excepts to Paragraphs 5. A Plaintiff's Original Petition where Plaintiff seeks declaratory judgment that as to liability and damages. Declaratory Judgments are not the appropriate cause of action to pursue claims for uninsured/underinsured motorist benefits. The nature and scope of uninsured motorist claims has been defined by the Texas Supreme Court in *Brainard v. Trinity Universal Ins Co*, 216 S.W.3d 809 (Tex.2006). The claim for declaratory judgment serves no purpose other than to confuse the issues before the court. The question of liability and the nature and extent of Plaintiff's injuries and damages are for the jury, not for a declaratory judgment. The Defendant therefore asks that Plaintiff replead and that the petition be amended to remove this "cause of action" and damage claim.

**II.**

Defendant denies each and every, all and singular, the allegations contained in Plaintiff's Original Petition, and demands strict proof thereof as required by law.

**III.**

Pleading further, should same be necessary, Defendant states that a bona fide dispute exists between the parties relating to the cause, nature and extent of Plaintiff's injuries.

**IV.**

Defendant, **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY** is sued by the Plaintiff pursuant to an uninsured/underinsured motorist protection policy provision set forth in a Texas Automobile Policy. Defendant would show that Plaintiff's claims are subject to the conditions and exclusions contained therein. Otherwise, Defendant denies the allegations of Plaintiff, including the nature, extent, duration and causation of Plaintiff's claimed injuries and requires him to prove same as required by law by a preponderance of the evidence.

**V.**

Pleading further, Defendant would show that there is no coverage under the personal automobile policy issued by Allstate Fire and Casualty Insurance Company for the accident alleged in this case while Plaintiff was driving an 18-wheeler in North Carolina.

**VI.**

As to any legal damages which may be found by any trier of the fact related to the occurrence in question, Defendant pleads the limitations for contractual liability set forth in the Plaintiff's Texas Personal Automobile Policy and the certificate of coverage, attached hereto as ***Exhibit A***.

**VII.**

For further answer, Defendant would show that Plaintiff's injuries and/or damages, if any, are the result of pre-existing conditions or subsequent conditions, not proximately caused by the negligence of any party to this action.

**VIII.**

Defendant, **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY** pleads the affirmative defense of offset or credit. Defendant, **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY** claims it is entitled to an offset or credit from the amount of damages found by the jury for an amount not less than the applicable liability limits and/or available liability coverage of any and all liability policies insuring any at fault party and/or any funds recovered from the Spirit receivership. Defendant further claims it is entitled to a credit or offset for benefits previously paid under any portion of any applicable insurance policy, including personal injury protection (PIP) benefits and/or medical payment benefits.

**IX.**

Defendant, **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY** pleads that pursuant to §41.0105 of the Civil Practice and Remedies Code, Plaintiff's recovery of medical and healthcare expenses is limited to the amount actually paid by Plaintiff or incurred by or on behalf of Plaintiff.

**X.**

Defendant further asserts that if coverage exists under Plaintiff's automobile policy, it is excess to any coverage provided to the vehicle Plaintiff was driving at the time of the collision made the basis of this lawsuit.

**XI.**

Pursuant to Rule 93 of the Texas Rules of Civil Procedure, Defendant **ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY** files this verified denial because Plaintiff has failed to comply with all conditions precedent to recover under the policy of insurance in question. Plaintiff has not established that he is legally entitled to recover damages from the owner or operator

of an uninsured/underinsured motor vehicle because of a bodily injury sustained by him, as required under applicable law.

**XII.**

Defendant denies that Plaintiff is entitled to attorney's fees.

**XIII.**

DEFENDANT hereby makes its written request for a jury trial in this cause pursuant to Rule 216 of the Texas Rules of Civil Procedure and deposits with the District Clerk of Cameron County, Texas, the requisite jury fee of Forty Dollars (\$40.00).

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff's suit be dismissed at Plaintiff's cost, and for such other and further relief to which this Defendant may be entitled, either at law or in equity.

Respectfully submitted,

**ROERIG, OLIVEIRA & FISHER, L.L.P.**

10225 North 10<sup>th</sup> Street  
McAllen, Texas 78504  
(956) 393-6300  
(956) 386-1625 (Fax)

By /s/ Rosemary Conrad-Sandoval  
ROSEMARY CONRAD-SANDOVAL  
Texas State Bar No. 04709300

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the foregoing instrument has been forwarded via electronic mail, in accordance with the Texas Rules of Civil Procedure, to all counsel of record as follows:

Malorie Peacock  
COWEN RODRIGUEZ PEACOCK  
6243 IH-10 W, Ste. 801  
San Antonio, Texas 78201

on this 26<sup>th</sup> day of March 2020.

/s/ Rosemary Conrad-Sandoval  
ROSEMARY CONRAD-SANDOVAL

## CAUSE NO. 2020-DCL-01089

CASIMIRO GRACIANO

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IN THE DISTRICT COURT

VS.

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357<sup>th</sup> JUDICIAL DISTRICTALLSTATE FIRE AND CASUALTY  
INSURANCE COMPANY

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CAMERON COUNTY, TEXAS

THE STATE OF TEXAS

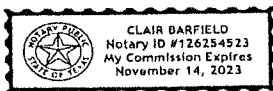
COUNTY OF DallasVERIFICATION

BEFORE ME, the undersigned authority, on this day personally appeared Ryan Gifford Robinson and after being duly sworn, deposes and says:

"My name is Ryan Gifford Robinson. I am a Claims Representative for Allstate Fire and Casualty Insurance Company. I am over the age of eighteen years. I am competent and authorized to testify to the facts set forth herein. I have read the foregoing Defendant, Allstate Fire and Casualty Insurance Company's Original Answer and the facts contained therein, which require verification, are true and correct."

Ryan Gifford Robinson  
Ryan Gifford Robinson

SUBSCRIBED AND SWORN TO BEFORE ME by the said Ryan Gifford Robinson, affiant,  
to which witness my hand and seal of office on this the 25 day of March, 2020.



Clair Barfield  
Notary Public, State of Texas

Clair Barfield  
Printed Name of Notary

My Commission Expires:

11/14/2023

## Renewal auto policy declarations

Your policy effective date is December 18, 2015



Platinum



Gold



Standard



Value Plan



ELVIRA S. ORTIZ

Cameron County District Clerk  
By Rachel Partida Deputy Clerk

You're in good hands.

Page 1 of 3

## Total Premium for the Policy Period

Please review your insured vehicle and verify its VIN is correct.

### Vehicle covered

2013 Ford Truck F150 4wd

Information as of November 3, 2015

## Summary

Named Insured(s)

**Edith Rodriguez and Casimiro G Alvizo**

Your policy provided by

**Allstate Fire and Casualty Insurance Company**

Policy period

Beginning **December 18, 2015** through  
**June 18, 2016** at 12:01 a.m. standard  
time

at the address of the named insured  
stated herein



Renewal auto policy declarations

Policy number: Policy effective

date: December 18, 2015 Your Allstate

agency is Edith Trevino

(956) 554-4961

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## Coverage detail for 2013 Ford Truck F150 4wd

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### Uninsured/Underinsured Motorists

 Bodily Injury	\$30,000 each person \$60,000 each accident
 Property Damage	\$50,000 each accident



Renewal auto policy declarations

Policy number: **836 055 192**  
 Policy effective date: December 18, 2015  
 Your Allstate agency is Edith Trevino  
 (956) 554-4961



**Allstate**  
 You're in good hands.

Page 3 of 3

## Additional coverages

Coverage	Limits
Automobile Death Indemnity Insurance	Not purchased*
Total Disability	Not purchased*

**\* This coverage can provide you with valuable protection. To help you stay current with your insurance needs, contact your Allstate agent to discuss coverage options and other products and services that can help protect you.**

## Your policy documents

Your automobile policy consists of this Policy Declarations and the documents in the following list. Please keep these together.

- Auto Insurance Policy - AU10803
- Texas Personal Auto Policy-Amendatory Endorsement - AU14573
- Claim Satisfaction Guarantee Amendatory Endorsement - AP4783-2
- Amendatory Endorsement - AP4831
- Texas Limited Mexico Coverage Endorsement - AU14309
- Texas Amendatory Endorsement Allstate® Your Choice Auto Insurance Allstate Value Plan - AU10804-1

## Important payment and coverage information

Here is some additional, helpful information related to your coverage and paying your bill:

- ▶ Your Allstate Value Plan package contains the following features:
  - Required Allstate Easy Pay Plan participation
  - No Accident Waiver program or tenure accumulation towards accident waiver eligibility
- ▶ We agree to make available to you an installment payment plan as described in Rule 14 of the Texas Automobile Rules and Rating Manual, except when an installment payment plan is prohibited by other rule or by statute.
- ▶ If you would like to make a payment by credit card (Visa/MasterCard/Discover) or Check-By-Phone, please call 1-800-357-5092.

**Allstate Fire and Casualty Insurance Company's** Secretary and President have signed this policy with legal authority at Northbrook, Illinois.

Steven P. Sorenson  
 President

Susan L. Lees  
 Secretary

